

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Davy Rodriguez

v.

Kevin E. Mengel, III and Kathleen Barton

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

02/28/2019

Date


 Attorney-at-law

Attorney for Plaintiff

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(215) 422-4101

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Telephone

FAX Number

E-Mail Address

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 209 Fox Hall Drive, Apt F., Bel Air, MD 21015

Address of Defendant: 2500 Bideford Court, West Chester PA 19382

Place of Accident, Incident or Transaction: 207 North Chester Road, West Chester

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|-----------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 02/28/2019

84189

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

CIVIL: (Place a ☒ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases

(Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☒ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury *(Please specify):* _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases

(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Gregory A. Smith, counsel of record or pro se plaintiff, do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 02/28/2019

84189

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS**Davy Rodriguez**

(b) County of Residence of First Listed Plaintiff **Harford**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS**Kevin E. Mengel, III and Kathlenn Barton**

County of Residence of First Listed Defendant **Chester**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
02/28/19

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

<div>DAVY RODRIGUEZ 209 Fox Hall Drive Apt F Bel Air, MD 21015</div> <div>Plaintiff</div> <div>vs.</div> <div>KEVIN E. MENGEL, III. 2500 Bideford Court West Chester, PA 19382 And KATHLEEN BARTON 2500 Bideford Court West Chester, PA 19382</div> <div>Defendants</div>	<div>DOCKET NO.</div>
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COMPLAINT

PARTIES

1. Plaintiff Davy Rodriguez is an adult individual with a physical address of 209 Fox Hall Drive, Apartment F, Bel Air, Maryland 21015.
2. Defendant Kevin E. Mengel, III, is an adult individual with a physical address of 2500 Bideford Court, West Chester, PA 19382.
3. Defendant Kathleen Barton is an adult individual with a physical address of 2500 Bideford Court, West Chester, PA 19382.

ALLEGATIONS OF JURISDICTION AND VENUE

4. Jurisdiction in this matter is based upon diversity of citizenship in accordance with 28 U.S.C. Section 1332.

5. The Plaintiff is seeking damages in excess of \$75,000 exclusive of interest, costs, and attorneys fees.
6. The Plaintiff is a citizen of the State of Maryland.
7. The Defendants are citizens of the Commonwealth of Pennsylvania.
8. The accident at issue in this lawsuit took place in Chester County, Pennsylvania.
9. Venue is proper in the United States District Court for the Eastern District of Pennsylvania under 28 U.S.C. Section 1391(a).

OPERATIVE FACTS

10. The facts and occurrences hereinafter stated took place on September 16, 2017 at or near 207 North Chester Road in West Chester, Chester County, Pennsylvania.
11. At all times material hereto, Plaintiff was the operator of a Ford pickup truck.
12. At all times material hereto, Defendant Mengel operated, maintained and/or controlled a Subaru automobile owned by Defendant Barton.
13. At all times material hereto Defendant Mengel was acting as the agent, employee, servant, and/or worker of Defendant Barton and in furtherance of her interests.
14. At all times material hereto, Defendant Barton acted and/or failed to act by and through her duly authorized agents, employees, servants, and/or workers, including but not limited to Defendant Mengel.
15. On September 16, 2017 Plaintiff drove his truck from Maryland to visit his brother, who lived at 207 North Chester Road, West Chester, PA 19382.
16. During the drive, Plaintiff had a video camera filming his trip.
17. Plaintiff was proceeding lawfully and carefully on North Chester Road, intending to turn into his brother's driveway, when he was struck from behind by a vehicle

operated by Defendant Mengel that was traveling at a dangerous, extreme, and excessive rate of speed.

18. The force of the impact caused Plaintiff's vehicle to flip onto its side.
19. The result of the impact was captured on Plaintiff's video.
20. Plaintiff's vehicle was declared a total loss from the severe damage done by Defendant Mengel. (Photographs of the two vehicles are attached hereto as Exhibit "A.")
21. Plaintiff was taken from the scene to the Paoli Hospital Emergency Room where Plaintiff was diagnosed with, among other injuries, a traumatic subarachnoid hemorrhage.
22. As a direct and proximate result of the negligence, carelessness and/or recklessness of the Defendants Plaintiff suffered serious and severe injuries including but are not limited to pain, suffering, injuries to his head, including a traumatic subarachnoid hemorrhage, concussion, headaches, and a loss/impairment of body function, some or all of which may be permanent in nature, to his great detriment and loss.

COUNT I

DAVY RODRIGUEZ V. KEVIN E. MENGEL, III

23. Paragraphs 1 through 22 are incorporated by reference as if fully set forth herein.
24. The negligence, carelessness and/or recklessness of Defendant Mengel includes, but is not limited to, the following:
 - a. Failing to exercise reasonable care;
 - b. Operating his vehicle at an excessive rate of speed which was unsafe

and dangerous under the conditions under the circumstances;

- c. Failure to have his vehicle under proper and adequate control;
- d. Failure to apply the brakes in a timely fashion as to avoid a collision;
- e. Failure to operate the vehicle in accordance with the laws of the Commonwealth of Pennsylvania;
- f. Operating the vehicle without due regard to the rights, safety and position of Plaintiff and in a manner so as to recklessly endanger Plaintiff;
- g. Failure to operate the vehicle in such a manner so as to have avoided creating a collision;
- h. Failure to observe the obvious and lawful proximity of the Plaintiff's vehicle;
- i. Failure to operate the vehicle in accordance with existing conditions;
- j. Failing to keep a safe distance between the Defendants' vehicle and Plaintiff's vehicle;
- k. Failing to avoid contact with Plaintiff's vehicle;
- l. Failure to pay adequate attention to the conditions on the road;
- m. Causing the crash;
- n. Colliding with Plaintiff's vehicle;
- o. Driving in an unsafe fashion;
- p. Negligence *per se*;
- q. Driving too fast for conditions;
- r. Failing to pay adequate attention; and
- s. Causing injury to Plaintiff.

25. As a direct and proximate result of the negligence, carelessness and/or recklessness of Defendants Plaintiff suffered serious and severe injuries including

but are not limited to pain, suffering, injuries to his head, including a traumatic subarachnoid hemorrhage, concussion, headaches, and a loss/impairment of body function, some or all of which may be permanent in nature, to his great detriment and loss.

26. As a direct and proximate result of the negligence, carelessness and/or recklessness of Defendants, Plaintiff suffered a loss of life's pleasures, a loss of the ability to fully enjoy life and the inability to perform his usual and customary daily activities, duties, labors, occupation, avocations, some or all of which may be permanent in nature, to his great detriment and loss.
27. As a direct and proximate result of the negligence, carelessness and/or recklessness of Defendants, Plaintiff was caused to undergo extensive, costly, and painful medical treatment in the past, and may have to undergo extensive, costly, and painful medical treatment in the future, to his great detriment and loss.
28. As a direct and proximate result of the negligence, carelessness and/or recklessness of Defendants, Plaintiff has suffered economic losses in the nature of wage loss and property damage to his car, and may suffer wage loss in the future, to his great detriment and loss.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants, in an amount in excess of Seventy Five Thousand (\$75,000.00) Dollars, together with delay damages and any other relief to which plaintiff may be entitled under the law.

COUNT II

DAVY RODRIGUEZ V. KATHLEEN BARTON

29. Paragraphs 1 through 28 are incorporated by reference as if fully set forth herein.

30. The negligence, carelessness, and/or recklessness of Defendant Barton, individually and by and through her agents, including but not limited to Defendant Mengel, includes, but is not limited to the following:
- a) Negligently entrusting her vehicle to an inexperienced and unsafe driver, Defendant Mengel;
 - b) Failing to appropriately monitor persons she allowed to use her vehicle, including Defendant Mengel;
 - c) Failure to exercise reasonable care;
 - d) Failure to exercise reasonable care under the circumstances;
 - e) Negligence as a matter of law;
 - f) Negligence *per se*; and
 - g) Vicarious liability for the negligence, carelessness, and/or recklessness of her agent, Defendant Mengel.
31. As a direct and proximate result of the negligence, carelessness and/or recklessness of Defendants Plaintiff suffered serious and severe injuries including but are not limited to pain, suffering, injuries to his head, including a traumatic subarachnoid hemorrhage, concussion, headaches, and a loss/impairment of body function, some or all of which may be permanent in nature, to his great detriment and loss.
32. As a direct and proximate result of the negligence, carelessness and/or recklessness of Defendants, Plaintiff suffered a loss of life's pleasures, a loss of the ability to fully enjoy life and the inability to perform his usual and customary daily activities, duties, labors, occupation, avocations, some or all of which may be permanent in nature, to his great detriment and loss.
33. As a direct and proximate result of the negligence, carelessness and/or recklessness

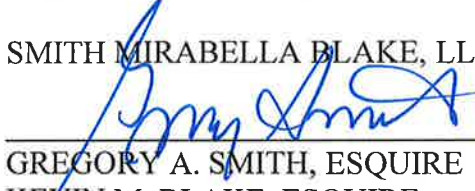
of Defendants, Plaintiff was caused to undergo extensive, costly, and painful medical treatment in the past, and may have to undergo extensive, costly, and painful medical treatment in the future, to his great detriment and loss.

34. As a direct and proximate result of the negligence, carelessness and/or recklessness of Defendants, Plaintiff has suffered economic losses in the nature of wage loss and property damage to his car, and may suffer wage loss in the future, to his great detriment and loss.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants, in an amount in excess of Seventy Five Thousand (\$75,000.00) Dollars, together with delay damages and any other relief to which plaintiff may be entitled under the law.

Respectfully submitted,

SMITH MIRABELLA BLAKE, LLC

BY: 
GREGORY A. SMITH, ESQUIRE
KEVIN M. BLAKE, ESQUIRE
Attorneys for Plaintiff

DATE: February 28, 2019

EXHIBIT A

















